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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA  
AT ANCHORAGE

AgWEST FARM CREDIT, PCA,  
Plaintiff,

vs.

IN ADMIRALTY

KIMBERLY C, O.N. 596518, its Engines,  
Machinery, Appurtenances, etc.,  
and RM 250, O.N. 928702, its Machinery,  
Appurtenances, etc.,  
*In Rem,*

and

YAK TIMBER, INC. an Alaska corporation,  
*in personam,*  
Defendants.

Case No. 3:23-CV-00072-HRH

Declaration of Lafcadio Darling re  
Reply to Motion for Prelim Injunction  
*AgWest Farm Credit v KIMBERLY C, et al.*  
Case No. 3:23-CV-00072-HRH - Page 1 of 5

**DECLARATION OF LAFCADIO DARLING**  
**IN SUPPORT OF REPLY ON MOTION FOR PRELIMINARY INJUNCTION**

I, LAFCADIO DARLING, declare as follows:

1. I am over the age of eighteen and have personal knowledge of the matters set forth herein. I am an attorney in good standing and licensed to practice before this Court. I am an attorney for Plaintiff in this matter.

2. One of the issues raised in Response to Farm Credit's Motion is whether the *in rem* Defendant Vessels have legally-required certifications. In response, Yak Timber asserts that "the certificate of inspection and certificate of documentation are current." *Response* at p. 5.

3. On or about May 10, 2023, our office searched the US Coast Guard Port State Information Exchange (PSIX) database for information on these Vessels. The results of that search shows that the *in rem* Defendant barge has a Certificate of Inspection that *expired* on January 2, 2023. Attached hereto as **Exhibit 1** is a true and correct copy of the current USGC PSIX report for the *in rem* Defendant barge. This is a violation of federal regulations, which require that this vessel be regularly inspected by the Coast Guard and have a current Certificate of Inspection. *See* 46 U.S.C. § 3301.

4. On May 10, 2023 our office requested certified copies of the Certificate of Documentation ("COD") for the *in rem* Defendant Vessels from the U.S. Coast

Declaration of Lafcadio Darling re  
Reply to Motion for Prelim Injunction  
*AgWest Farm Credit v KIMBERLY C, et al.*  
Case No. 3:23-CV-00072-HRH - Page 2 of 5

Guard National Vessel Documentation Center. All U.S. flagged vessels must have a current COD issued by the Coast Guard with the correct endorsements to operate commercially. In response to our requests, we received a copy of the COD for the *in rem* Defendant KIMBERLY C which shows that it expired on February 28, 2023 and has not been renewed. Attached hereto as **Exhibit 2** is a true and correct copy of the certified COD we received from the Coast Guard on May 10, 2023. Commercial vessels are not permitted to operate in U.S. waters without a current COD. *See* 46 CFR § 67.7.

5. As part of its effort to inspect and ascertain the condition of the Vessels, Farm Credit had requested that Yak Timber provide Farm Credit access to repair records for the Vessels held by Seward Shipyard and records from the American Bureau of Shipping (ABS), the classification society that decides whether these Vessels have met class requirements under applicable law. Although this had been requested multiple times, Yak Timber did not provide such authorizations until May 9, 2023 – four days after Farm Credit filed the Motion.

6. While Yak Timber’s counsel provided certain requested items to Farm Credit’s counsel after the Motion was filed, there are still items missing and areas of significant concern:

a. Yak Timber’s Response claims that the Vessels have adequate

Declaration of Lafcadio Darling re  
Reply to Motion for Prelim Injunction  
*AgWest Farm Credit v KIMBERLY C, et al.*  
Case No. 3:23-CV-00072-HRH - Page 3 of 5

insurance. This is inaccurate. To date, Yak Timber has not supplied to the Farm Credit or this Court any evidence that it has pollution insurance for the Vessels. The insurance documents provided with the Declaration of Shari Jensen (Dkt. No. 13-1) are the same insurance documents that were previously sent and do not show any pollution coverage—in fact, these policies have a pollution *exclusion*.

b. Farm Credit’s counsel repeatedly noted to Yak Timber’s counsel that the Vessels’ protection & indemnity (“P&I”) coverage is insufficient for an operating tug and barge and should be raised from \$1,000,000 to \$5,000,000, which is standard for commercial vessels with multiple crewmembers. To date, there is no evidence that this additional coverage has been obtained, and the documents provided with Yak Timber’s Response do not indicate such insurance is in place.

7. In its Response materials, Yak Timber repeatedly states that Farm Credit “canceled” a scheduled inspection of the Vessels.<sup>1</sup> This is untrue. Although Yak Timber initially stated it would agree to Farm Credit’s requested inspection, it failed to cooperate in carrying that out. On or about April 15, 2023 Farm Credit engaged surveyor David Mehus and proposed custodian Buck Fowler to travel to

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<sup>1</sup> See Response at p. 7; Adams Declaration at ¶11.

Yakutat to conduct an inspection. However, that inspection required certain arrangements to be made – including providing the surveyor repair information, giving the surveyor access to the tug and barge (including gas-free certification of the enclosed spaces on the barge), and providing transport to the Vessels. Despite repeated inquiries, Yak Timber never responded to Farm Credit’s inquiries on this issue and we no assurance of arrangements was provided. On April 18, 2023, Yak Timber’s prior counsel Mr. Buford, indicated that he was unable to secure documentation, cooperation, or permission from Yak Timber necessary to allow the inspection to proceed. As a result, we requested that Mr. Mehus and Mr. Fowler stand by until we had the needed information and were able to provide safe access to the Vessels. As of the date of this Declaration, no access to the Vessels has been given to Farm Credit, Mr. Mehus, or Mr. Fowler.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

DATED this 11<sup>th</sup> day of May 2023 at Seattle, Washington.

HOLMES WEDDLE & BARCOTT, P.C.

s/ Lafcadio H Darling  
Lafcadio Darling, ABA #1510084

Declaration of Lafcadio Darling re  
Reply to Motion for Prelim Injunction  
*AgWest Farm Credit v KIMBERLY C, et al.*  
Case No. 3:23-CV-00072-HRH - Page 5 of 5